S.B.CIVIL WRIT PETITION NO.2285/2006

Bhopalwala Arya Higher Secondary School Managing Committee, Sriganganagar
v.
State of Rajasthan & Ors.

Date of Order :: 13th November, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. V.K.Aggarwal, for the petitioner.
Mr. G.J.Gupta, for the respondents.

....

By this petition for writ a challenge is given to the order dated 24.4.2006 issued by the Secretary, Zila Janabhav Nirakaran Satarkta Samiti-cum-Additional Collector (City), Sriganganagar directing the petitioner to make payment of gratuity to respondent No.4 Gauri Shankar Ojha in accordance with Rule 82(1) of the Rajasthan Non Government Educational Institutions Rules, 1993 (hereinafter referred to as “the Rules of 1993”) read with Payment of Gratuity Act, 1972 (hereinafter referred to as “the Act of 1972”).

It is contended by counsel for the petitioner that the respondent No.4 retired from service on 31.7.1990 on attaining the age of superannuation i.e. of 58 years and on the date of retirement of the petitioner the Rules of 1993 were not in force, as

such the respondent No.4 is not entitled for gratuity. It is also stated that the Act of 1972 is having no application in present controversy in light of the judgment of Hon'ble Supreme Court in the case of Ahmedabad Pvt. Primary Teachers' Association v. Administrative Officer and others, reported in (2004)1 SCC 755. Beside the above, validity of the order impugned is also challenged on the count that the Zila Janabhav Nirakaran Satarkta Samiti is having no authority to direct the petitioner to make payment of gratuity to the respondent No.4.

Heard counsel for the parties.

It is not at all in dispute that the respondent No.4 stood retired from service on 31.7.1990 and on that day the Rajasthan Non Government Educational Institutions Act, 1989 (hereinafter referred to as “the Act of 1989”) as well as the Rules of 1993 were not in force, as such the respondent No.4 is not entitled to receive gratuity under the Act of 1989 read with the Rules of 1993. The Act of 1972 is also not having any application in the case of the respondent No.4 in light of the judgment of Hon'ble Supreme Court in the case of Ahmedabad Pvt. Primary Teachers' Association v. Administrative Officer and others (supra), as such the order impugned dated 24.4.2006 on its face is erroneous.

Accordingly, this petition for writ is allowed. The order impugned dated 24.4.2006 is hereby quashed with no order to costs.

(GOVIND MATHUR),J.

kkm/ps.